THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.6634 OF 2006

Date: 27-11-2006

Between:
Valluri Krishna, s/o Valluri Peda Masthan,
Aged 34 years, Occ: Agriculture,
R/o Eluchuru, Santamaguluru Mandal,
Prakasam District.

... Petitioner.

And

1. Mukteswaram Gram Panchayat,
   rep. by its Executive Authority,
   Mukteswaram, Ballikurava Mandal,
   Prakasam District and 5 others.

... Respondents.

* * *

ORDER:

Heard the counsel.

2. The writ petition is filed for a writ of Mandamus declaring action of the first respondent in interfering with the possession and enjoyment of the Dasabandham Cheruvu (tank) situated at Mukteswaram village, Ballikurava Mandal, Prakasam District, as illegal, arbitrary and violative of Article 14 of the Constitution of India; and consequently direct the first respondent to permit the petitioner to take usufruct in respect of the said tank.

3. It is stated that in Mukteswaram village, Ballikurava Mandal,

Prakasam District, there is a tank by name Dasabandham Cheruvu (tank) and in relation to the ownership of the said tank, there is a civil dispute pending before the learned Principal District Munsif, Addanki, vide suit O.S.No.51 of 1981. It is stated that respondents 2 to 6 have filed the said suit against the first respondent and it is also further stated that in the said suit the first respondent was set *ex parte*. Thereafter, the first respondent filed an application under Section 5 of the Limitation Act and another application under Order IX Rule 13 of the Code of Civil Procedure. It is also stated that the learned judge dismissed the said application and assailing the correctness of the same, C.R.P.No.1406 of 2005 was filed and this Court by order dated 21.02.2006 allowed the said C.R.P, and hence, the suit is now restored to file. It is also stated that respondents 2 to 6 had leased out the right to collect fish in the said tank to the petitioner and the petitioner has been their lessee for the past ten years and more. It is also stated that respondents 2 to 6 have done so by receiving the entire lease amount on the date of execution of the lease deed. It is further stated that on a reading of lease deed, it is clear that the lease would expire by 23.8.2006. It is also stated that in anticipation that the petitioner has right over the tank to use the same as a lessee up to 23.8.2006 the petitioner reared the fish in the said tank and the crop would come only in the month of August 2006. In such circumstances, it is stated that the petitioners left with no other option except to approach this Court praying for appropriate relief.

4. Respondents 2 to 5 filed counter affidavit virtually supporting

the stand taken by the writ petitioner. In the counter-affidavit filed by the first respondent the allegations in the affidavit filed in support of the writ petition were substantially denied and it was stated that it is false to state that the petitioner had reared the fish, the alleged lease and payment of rent by the petitioner to respondents 2 to 6. The story is thought of only to deprive the legitimate rights of the first respondent. It is stated that respondents 2 to 6 filed O.S.No.510 of 1981 on the file of the Junior Civil Judge, Addanki, with false allegations for a declaration that the first respondent has no right or power over the Dasabandham Cheruvu and for consequential injunction restraining the respondent from interfering with the alleged possession. In fact, the respondents 2 to 6 have no title or possession over the said tank at any point of time and they never exercised any right or interest over the same. It is also stated that the said tank belongs to the first respondent. Unfortunately, there was a change in the president ship of the respondent and the former president did not inform about the suit to the new president and as such the new president could not prosecute the suit and ultimately *ex parte* decree was passed on 12.7.1989. Thereafter, the president filed two applications one for setting aside the *ex parte* decree and another for condonation of delay. The petition for condonation of delay I.A.No.1667 of 1989 was allowed, but subsequently the court below dismissed the petition for setting aside the *ex parte* decree I.A.No.970 of 2003 on 15.3.2002. Then the respondent preferred appeal C.M.A.No.6 of 2002 and the appellate court dismissed the same. Then the first respondent preferred C.R.P.1406 of 2005 and this Court was pleased to allow

the C.R.P and consequently allowed I.A.No.970 of 2003 by setting aside the decree with a direction that the suit shall be disposed of within three months. It is stated that since the said suit is coming up for trial, the respondents 2 to 6 who are fully aware of their strength in their case and who are fully aware that they may not succeed in the suit, have hatched up a plan to somehow get in possession of the property, set up the petitioner, fabricated the alleged lease deed and got filed this writ petition collusively.

5. As can be seen the respective stands taken by the parties to the writ petition in the affidavit filed in support of the writ petition and in the counter affidavit filed by the first respondent it is clear that a civil suit O.S.No.510 of 1981 on the file of the Junior Civil Judge, Addanki, is pending disposal. Further, it is also clear that for sufficiently a long time the suit was not attempted and after a long lapse of time the first respondent had moved appropriate applications and ultimately by virtue of an order made in C.R.P. now the suit is being further proceeded with.

6. It is needless to say that the suit O.S.No.510 of 1981 on the file of the Junior Civil Judge, Addanki, is said to be pending. It is needless to say that such an old suit of the year 1981 to be given top priority and accordingly the Junior Civil Judge, Addanki, is directed to dispose of the suit at the earliest point of time, preferably within a period of two months from the date of receipt of a copy of this order. However, taking the ground of equity into consideration and also the stand taken by the writ petitioner that when the transaction was entered into, no such litigation was pending and he bonafide entered into this transaction with the real

owners, it would be just and proper to permit the petitioner to take the fish existing reared by him on deposit of an amount of Rs.50,000/- (Rupees fifty thousand only) in O.S.No.510 of 1981 on the file of the Junior Civil Judge, Addanki within a period of one month and on such deposit the petitioner is permitted to take the present existing fish reared by him. Such amount deposited to the credit of O.S.No.510 of 1981 on the file of the Junior Civil Judge, Addanki would be subject to the result of the further orders, which may be made at the time of final disposal of O.S.No.510 of 1981.

7. With the above directions, the writ petition is disposed of. No order as to costs.

_____

P.S.NARAYANA, J.

Date: November 27, 2006.
BSB